

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

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JUL 17 2001
ERS DIVISION

IN THE MATTER OF: The claim for
Reimbursement under the PECFA
Program by

MADISON HEARING OFFICE
1801 Aberg Ave, Suite A
P.O. Box 7975
Madison, WI 53707-7975

Beatrice Grasee
East Side Country Market

Hearing Number: 01~2
PECFA Claim Number: 54971-9527-96

FINAL HEARING OFFICER DECISION

This is a final decision of the Department of Commerce. You may request a rehearing pursuant to §227.49, Stats., within 20 days of the date of this decision, by sending your petition to Dennis Kozich, Chief Counsel, Department of Commerce, P.O. Box 7970. This decision may be appealed within **30 days** of the date of this decision or the date of a decision on a request for rehearing, if any, pursuant to §227.53, Stats. The parties in interest are the Secretary, Department of Commerce, 201 West Washington Ave., 6th Floor, P.O. Box 7970, Madison, WI 53707-7970 and the appellant named in the appeal caption above.

STATE HEARING OFFICER: DATED AND SIGNED:

Gretchen Mrozinski July 16, 2001

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Mailed to:

Appellant Agent or Attorney

Department of Commerce

Attorney David A. Goluba
P.O. Box 261
Ripon, WI 54971-0261

Kristiane Randal
Assistant Legal Counsel
P.O. Box 7838
Madison, WI 53707-7838

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

In the matter of the PECFA Appeal of:

Beatrice Grasee
East Side Country Mkt PECFA Claim # 54971-9527-96
W 13196 Highway 23 Hearing # 01-62
Ripon, WI 54971

FINAL DECISION ON DEPARTMENT'S MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER JURISDICTION, MOOTNESS, OR DEFAULT

The Department of Commerce has moved for the dismissal of the Claimant's appeal on the grounds that the appeal lacks subject matter jurisdiction, is moot, and is in default.

BACKGROUND

By a decision dated January 25, 2001, the Department of Commerce ("Department") denied approximately \$13,000 in reimbursement for a PECFA claim submitted by the Claimant. The Claimant appealed the decision on February 14, 2001, within the 30-day appeal period. The appeal letter was prepared by the Claimant's attorney, Mr. David Goluba. The appeal letter identified the party at issue, the site address, the amount being appealed, and the decision date. The letter went on to state:

The claimant specifically wishes to appeal:

Each and every cost incurred by the claimant which was deemed ineligible for the reimbursement as a PECFA cost. Each such expenditure deemed ineligible is set forth in the "BREAKDOWN OF PECFA COSTS" forwarded to the claimant. The amount of expenditures deemed ineligible totaled \$12,995.04

The Department's appeal is unreasonable in that:

1. All expenditures were unreasonable;
2. All charges were necessarily incurred in connection with the cleanup project and are reimbursable under Wis. Admin. Code sec. Comm. 47.30;
3. The denial of reimbursement was arbitrary and capricious.

The letter concluded with a request that the Department advise if it felt necessary that the Claimant file any other documents or other information to perfect the appeal. Furthermore, a copy of the decision was attached to the appeal letter.

The Department received the appeal and processed it. On February 14, 2001, the Department sent a letter to the Hearing Office advising the PECFA coordinator that the Claimant had appealed and that the matter should be assigned to an administrative law judge. At various times, the Department has been known to send claimants a letter asking the claimant to provide more detail as to why he or she appealed. Such letter advises the claimant to provide the exact items appealed, every reason for the appeal and why the claimant thought the Department's decision was incorrect. The Department did not send such a letter to the Claimant in the case at hand. However, on February 26, 2001, the Department submitted a motion to dismiss arguing that the Claimant's appeal letter did not comply with Wis. Stat. § 101.02(6).

Wisconsin Stat. § 101.02(6)(f) provides

Such petition for hearing shall be by verified petition filed with the department, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the department on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the department shall be open to the public.

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The Department has interpreted "unreasonable" as meaning incorrect under PECFA program statutes and rules (See *Final Decision on Department's Motion to Dismiss* in PECFA Claim # 53066-3146-31, Hearing #'s 00-194 and 00-193; letter from Department Attorney Kristiane Randal to the PECFA coordinator at the Hearing Office).

DISCUSSION

The Claimant's appeal letter satisfied the requirements of Wis. Stat. § 101.02(6)(f). The letter specifically refers to what is being appealed (the January 25, 2001 determination), and what items are being appealed. The letter further advises the Department that the Claimant is appealing because he/she feels that the Department's decision was unreasonable, the charges were necessarily incurred pursuant to the PECFA program and the denial of reimbursement was arbitrary and capricious. The Department has interpreted "unreasonable" as meaning incorrect under PECFA program statutes and rules. As such, the appeal letter put the Department on notice that the Claimant was appealing the specific items denied in the January 25, 2001 decision because he/she felt that the denial of reimbursement of such items was contrary to the PECFA program statutes and rules. Accordingly, the appeal letter on its face satisfies the requirements of Wis. Stat. § 101.02(6)(f).

Furthermore, the Department's objection to the lack of identified issues is not persuasive. The Department argues that without specific issues, the Department cannot evaluate the appeal, prepare for the hearing, issue a correct notice of hearing, or deny a hearing on issues that have previously been adequately considered. However, during prehearings, the Department, the

Claimant and the administrative law judge discuss what is at issue for the upcoming hearing. The Department almost always proposes the following issue statement, "Whether the Department's decision dated _____ was incorrect with regard to the items identified in the Claimant's appeal letter dated _____." This is a rather vague, albeit inclusive issue statement, which serves to cover every conceivable issue that could be presented at the hearing. Nevertheless, the Department has not required nor asked for a more specific issue statement. Further, this is the issue statement included on the notice of hearing. This issue statement is no more defined than what the Claimant identified in his/her appeal letter. In addition, the actual hearings are quite uniform. The Department presents its case by using standard department witnesses and standard testimony to demonstrate why a cost was not reimbursed. The Claimant must prove why that cost should be reimbursed. Therefore, when a Claimant appeals, the Department knows who has the burden of proof and what the Claimant must prove. There are very little surprises in these hearings. As such, the Claimant's identification of the issue being whether the Department's decisions were unreasonable is not vague. Finally, if the Department truly felt that it needed more information, it could have sent the Claimant one of its standard letters asking for more information--as it historically has done. It could have clarified the issue by contacting the Claimant through negotiations or otherwise. Under such circumstances, the Department has not been prejudiced by the Claimant's identification of the issue(s).

This is a final decision on the Department's motion to dismiss because such authority was conferred on this tribunal by the Delegation Order signed by Brenda Blanchard, Secretary of the Department. That order specifically allows this tribunal to issue final orders involving issues of default. Default is defined by Black's Law Dictionary as "An omission of that which ought to be done." The Department is contending that the Claimant did not include all that he was required to include in the appeal letter. This is an allegation of default. Accordingly, this is a final decision.

ORDER

The Department of Commerce's Motion to Dismiss is denied. This matter will proceed to hearing unless otherwise disposed of.

Dated and mailed this 16th day of July 2001.

BY: Gretchen Mrozinski
Administrative Law Judge
Madison UI Hearing Office
1801 Aberg Ave, Suite A
P O. Box 7975
Madison, WI 53707-7975